

11/08/2007

EXHIBIT B
(Subleased Equipment description)

"MISCELLANEOUS OWNED EQUIPMENT"

Qty	Location	Item Name	Item Description	Model/Serial #
1	Server Room	Techlogics	Wireless Router	9500
1	Server Room	Power Supply	APC	5000
1	Server Room	Power Supply	APC	3000XL
1	Server Room	KVM Switch	Belkin	n/a
1	Server Room	Switch	Catalyst	3550
1	Server Room	Switch	Catalyst	3550
1	Server Room	Switch	Catalyst	6500
4	Warehouse	Tapers	Tapers/Laminators	3M 700E
1	Warehouse	Pallet Scale	Digital Read Out	UK
8	Warehouse	Workstation Desks		UK
275	Warehouse	Grey Totes		UK
8	Warehouse	Rolling Flat Carts		UK
8	Warehouse	Laundry Baskets		UK
3	Warehouse	Pallet Jacks		UK
15	Warehouse	Trashcans		UK
Multiple	Warehouse	Conveyor parts	Misc. spare parts	Siemens/UK
Multiple	Warehouse	Racking parts	Misc. spare parts	
2	Warehouse	Black Switch Boxes		UK

"MATERIAL HANDLING EQUIPMENT LEASED FROM GE CAPITAL #4145183-002"

Qty	Location	Item Name	Item Description	Model/Serial #
1	Warehouse	Electric Stockpicker	Forklift truck w/2 batteries & 1 charger	SP3220-30 / 1A265785
1	Warehouse	Electric Stockpicker	Forklift truck w/2 batteries & 1 charger	SP3220-30 / 1A265786
1	Warehouse	Electric Stockpicker	Forklift truck w/2 batteries & 1 charger	SP3220-30 / 1A265787
1	Warehouse	Electric Reach	Forklift truck w/2 batteries & 1 charger	SP3220-30 / 1A265984
1	Warehouse	Electric Reach	Forklift truck w/2 batteries & 1 charger	SP3220-30 / 1A265985
1	Warehouse	Electric Forklift	With 2 batteries, 1 charger	RC3020-030 / 1A265502
1	Warehouse	Electric Palletjack Forklift Truck	With 2 batteries, 1 charger	PE4000-60 / 6A206583
1	Warehouse	Electric Palletjack Forklift Truck	With 2 batteries, 1 charger	PE4000-60 / 6A206584
1	Warehouse	Electric Palletjack Forklift Truck		WP2030-45 / 5A316671
5	Warehouse	Battery Stands	w/pans, roller station, hertralization & deionizing	

11/08/2007

			system	
--	--	--	--------	--

"CONVEYOR / RACKING EQUIPMENT LEASED FROM GE CAPITAL #4145183-001"

Unit	Model	Description	Conv. Width	Lgth. Feet	HP	Speed (fpm)	Support Type	Comment
RT+	0100	1102 Belt Driven Live Roller	30.25"	163'-0"	1.50	70	FS	Tri-Wide Support, Gap Plates\
RG+	0100 A	0200 Gravity Roller	21.25"	163'-0"			FS	Tri-Wide Support, Gap Plates
RG+	0100 B	0200 Gravity Roller	21.25"	163'-0"			FS	Tri-Wide Support, Gap Plates
WG+	0101	0300 Gravity Miscellaneous	30.25"	4'-0"			FS	Gravity Gate
RT+	0102	1256 Lineshaft Conveyor	30.25"	10'-9"	.750	90	FS	(1) 90° Curve
RA+	0103	1265 Flat Belt APC	30.25"	36'-0"	1.00	160	FS	DZB, Photo Eye Accum
BT+	0104	0410 Belt on Roller	30.25"	30'-0"	1.00	80/160	FS	Powertail, Vector Drive
RT+	0105	1102 Belt Driven Live Roller	30.25"	166'-3"	1.50	70	FS	Tri-Wide Support, Gap Plates
RG+	0105 A	0200 Gravity Roller	24.25"	166'-6"			FS	Tri-Wide Support, Gap Plates
RG+	0105 B	0200 Gravity Roller	24.25"	166'-6"			FS	Tri-Wide Support, Gap Plates
WG+	0106	0300 Gravity Miscellaneous	30.25"	4'-0"			FS	Gravity Gate
RT+	0107	1256 Lineshaft Conveyor	30.25"	14'-9"	.750	90	FS	(1) 90° Curve
RA+	0108	1265 Flat Belt APC	30.25"	96'-0"	1.50	160	FS	DZB, Photo Eye Accum
BT+	0109	0410 Belt on Roller	30.25"	32'-3"	1.00	80/160	FS	Powertail, Vector Drive
BT+	0110	0220 Wide Belt Merge	74"	16'-0"	3.00	250	FS	With Powered Verti-belt
VB+	0110 A	0220 Fixed Verti-belt	4"	16'-0"	1.00	300	FS	Mounted to Unit BT+0110
RT+	0111	0410 Belt on Roller	30.25"	15'-11"	2.00	250	FS	
SS+	0112	2455 PS 140 Positive Sorter	39.25"	113'-4"	20.00	325	FS	(7) Diverts w/20° Spurs, (1) 70° Curve, (5) Future Diverts

11:08:2007

Unit	Model	Description	Conv. Width	Lgth. Feet	HP	Speed (fpm)	Support Type	Comment
RG+	0113	0100 Gravity Wheel	30.25"	10'-0"			FS	
RT+	0114	1256 Lineshaft Conveyor	30.25"	29'-5"	1.50	150	FS	(1) 90° Curve
RA+	0115	0200 Flat Belt Apc	30.25"	45'-0"	1.00	160	FS	Fixed End Stop
BT+	0116	0410 Belt on Roller	30.25"	24'-5"	2.00	140	FS	Powertail, Brake Motor
RT+	0116 S	0996 Round Belt Live Roller	30.25"	9'-6"		140	FS	(1) 70° Curve, Slave Driven From Unit BT+0116
BT+	0117	0410 Belt on Roller	30.25"	32'-0"	2.00	170	FS	Powertail, Brake Motor
RA+	0118	1265 Flat Belt APC	30.25"	108'-0"	2.00	200	FS	DZB, Photo Eye Accum
BM+	0119	2305 Meter Belt	31.375"	10'-0"	1.00	100/210	FS	Powertail, Brake Motor
RT+	0120	0996 Round Belt Live Roller	30.25"	6'-9"	1.00	220	FS	(1) 45° Curve
WG+	0200	0100 Gravity Wheel	24.25"	15'-0"			FS	
RA+	0201	1265 Flat Belt APC	24.25"	57'-0"	1.50	160	FS	DZB
RT+	0202	0200 Gravity Roller	24.25"	15'-0"			FS	
RA+	0203	1265 Flat Belt APC	24.25"	60'-0"	1.50	160	FS	Photo Eye Accum
RT+	0204	1102 Belt Driven Live Roller	24.25"	54'-0"	1.50	60	FS	Gap Plates
RT+	0204 S	0996 Round Belt Live Roller Lineshaft Conveyor	24.25"	15'-1"	SD	60	FS	(2) 90° Curves, Slave Driven
RT+	0205	1102 Belt Driven Live Roller	24.25"	65'-0"	1.00	60	FS	Gap Plates
RG+	0206	0200 Gravity Wheel	24.25"	10'-0"			FS	
RT+	0207	0996 Round Belt Live Roller	24.25"	9'-0"	1.00	120	FS	(1) 90° Curve
RA+	0208	1265 Flat Belt APC	24.25"	48'-0"	1.00	130	FS	DZB, Photo Eye Accum

11-06-2007

Unit		Model	Description	Conv. Width	Lgth. Feet	HP	Speed (fpm)	Support Type	Comment
BT+	0209	0410	Belt on Roller	24.25"	17'-8"	1.00	50/100	FS	Powertail, Brake Motor
WG+	0210	0100	Gravity Wheel	24.25"	15'-0"			FS	
RA+	0211	1265	Flat Belt APC	24.25"	60'-0"	1.50	160	FS	Photo Eye Accum
RT+	0212	0200	Gravity Roller	24.25"	15'-0"			FS	
RT+	0213	1265	Flat Belt APC	24.25"	60'-0"	1.50	160	FS	Photo Eye Accum
RT+	0214	1102	Belt Driven Live Roller	24.25"	54'-0"	1.50	60	FS	Gap Plates
RT+	0214 S	0996	Round Belt Live Roller Lineshaft Conveyor	24.25"	15'-1"	SD	60	FS	(2) 90° Curves, Slave Driven
RT+	0215	1102	Belt Driven Live Roller	24.25"	61'-0"	1.00	60	FS	Gap Plates
WG+	0216	0200	Gravity Wheel	24.25"	10'-0"			FS	
RT+	0217	0996	Round Belt Live Roller	24.25"	9'-0"	1.00	120	FS	(1) 90° Curve
RA+	0218	1265	Flat Belt APC	24.25"	48'-0"		130	FS	DZB, Photo Eye Accum
BT+	0219	0410	Belt on Roller	24.25"	17'-8"	1.00	50/100	FS	Powertail, Brake Motor
WG+	0220	0100	Gravity Wheel	24.25"	15'-0"			FS	
RA+	0221	1265	Flat Belt APC	24.25"	60'-0"	1.50	160	FS	Photo Eye Accum
RG+	0222	0200	Gravity Roller	24.25"	15'-0"			FS	
RA+	0223	1265	Flat Belt APC	24.25"	60'-0"	1.50	160	FS	Photo Eye
RT+	0224	1102	Belt Driven Live Roller	24.25"	54'-0"	1.50	60	FS	Gap Plates
RT+	0224 S	0996	Round Belt Live Roller Lineshaft Conveyor	24.25"	15'-1"	SD	60	FS	(2) 90° Curves, Slave Driven
RT+	0225	1102	Belt Driven Live Roller	24.25"	61'-0"	1.00	60	FS	Gap Plates

04/05/10 15:34:09

Unit	Model	Description	Conv. Width	Lgth. Feet	HP	Speed (fpm)	Support Type	Comment
RT+	0226	1256 Lineshaft Conveyor	24.25"	36'-7"	1.00	120	FS	Three (3) 90° Curves
RA+	0227	1265 Flat Belt APC	24.25"	43'-0"	1.00	130	FS	DZB, Photo Eye Accum
BT+	0228	0410 Belt on Roller	24.25"	17'-8"	1.00	50/100	FS	Powertail, Brake Motor
RT+	0229	1102 Belt Driven Live Roller	30.25	16'-0"	2.00	140	FS	Sawtooth Merge w/ (3) tooth infeed
RT+	0229 S	0996 Round Belt Live Roller	30.25	7'-0"	SD	140	FS	One (1) 45° Curve, Slave Driven
RA+	0230	1265 Flat Belt APC	30.25	66'-0"	1.50	160	FS	Photo Eye Accum, Stop
RT+	0231	1256 Lineshaft Conveyor	30.25	101'-0"	2.00	90	FS	Two (2) 90° Curves, One (1) 60° Curve, One (1) 30° Merge
BT+	0232	0410 Belt on Roller	30.25	48'-0"	2.00	120	FS	Powertail, Brake Motor
RT+	0233	0996 Live Belt Live Roller	30.25	25'-0"	1.00	130	FS	Two (2) 90° Curves
RA+	0234	1265 Flat Belt APC	30.25	153'-0"	3.00	200	FS	DZB, Photoeye accum.
BM+	0235	2305 Meter Belt	31.375	10'-0"	1.00	100/210	FS	Powertail, Brake Motor
RT+	0236	0996 Round Belt Live Roller	30.25	6'-9"	1.00	220	FS	(1) 45° Curve
RG+	0237	0200 Gravity Roller	24.25	5'-0"				
RG+	0239	0200 Gravity Roller	24.25	5'-0"			FS	With 3' Gate
RG=	0240	0200 Gravity Roller	24.25	5'-0"				
RG+	0242	0200 Gravity Roller	24.25	5'-0"			FS	With 3' Gate
RT+	0300	1131 Live Roller	36.25	28'-4"	2.00	250	FS/PL T	Sawtooth Merge, With(4) Teeth Infeeds
RA+	0301	1265 Flat Belt APC	30.25"	48'-0"	2.00	220	FS/PL T	DZB, Photo Eye Accum
BI+	0302	2305 Meter Belt	31.375"	12'-0"	2.00	110/220	FS/PL T	Powertail, Vector Drive
BT+	0303	0977 Flat Belt Turn	30"	90°	3.00	280	FS/PL T	
BT+	0304	0977 Flat Belt	30"	90°	3.00	280	FS/PL	

11:08:2007

Unit	Model	Description	Conv. Width	Lgth. Feet	HP	Speed (fpm)	Support Type	Comment
		Turn					T	
BT+	0305	2310 Slider Bed	30"	4'-0"	1.00	280	FS/PL T	
SC+	0306	In-Motion Scale	30"	5'-0"	1.00	280	FS/PL T	
BT+	0306 A	2310 Slider Bed	30"	4'-0"	1.00	280	FS/PL T	
SS+	0307	2455 PS 140 Positive Sorter	39.25"	166'-8"	25.0 0	325	FS/PL T	(6) Diverts w/ 20° Spurs & 70° Gravity Curves (4) Future Diverts
RT+	0308	2490 Round Belt Live Roller	30.25"	22'-10"	1.00	300	FS/PL T	(2) 90° Curve
RA+	0309	1265 Flat Belt APC	30.25"	87'-0"	1.00	250	FS/PL T	DZB, PE
BM+	0310	2305 Meter Belt	30.625"	10'-0"	1.00	125/25 0	FS/PL T	Powertail, Brake Motor
CH+	0311	Gravity Chute	30.25"	25'-0"			FS	Typical of (4)
BF+	0312	Powered Extendable	30.25"	26'-0"/60'-0"		0-120	FS	Typical of (4) Units w/Transission, Guide Tracks, & PowerTrax
BT+	0315	0410 Belt on Roller	30.25"	14'-0"	1.00	120	FS/PL T	Brake Motor
WG+	0316	0100 Gravity Wheel	30.25	8'-5"			FS/PL T	(1) 70° Curve
RA+	0317	1265 Flat Belt APC	30.25	30'-0"	1.00	140	FS/PL T	DZB, Photo Eye Accum
RG+	0317 A	0200 Gravity Roller	24.25	30'-0"			FS/PL T	Fixed End Stop
RG+	0317 B	0200 Gravity Roller	24.25	30'-0"				Fixed End Stop
RT+	0318 A	0996 Round Belt Live Roller	30.25	15'-0"	1.00	150	FS/PL T	Two (2) 45° Curves
RA+	0318	1265 Flat Belt APC	30.25"	30'-0"	1.00	200	FS/PL T	DZB, Photo Eye Accum
BT+	0319	2305 Meter Belt	30.625"	10'-0"	1.00	50/100	FS/PL T	Powertail, Brake Motor
RT+	0320	1131 Flat Belt Live Roller	72.25"	12'-0"	1.00	120	FS/PL T	2:1 Fixed Divert Rail Merge
RT+	0321	1256 Lineshaft	30.25"	18'-0"	.750	120	FS/PL	(2) 90° Curve

2009-03-23

Unit		Model	Description	Conv. Width	Lgth. Feet	HP	Speed (fpm)	Support Type	Comment
			Conveyor					T	
RA+	0322	1265	Flat Belt APC	30.25"	48'-0"	1.00	120	FS/PL T	DZB, Photo Eye Accum
RG+	0322 A	0200	Gravity Roller	24.25"	60'-0"			FS/PL T	Fixed End Stops
RT+	0323	1256	Lineshaft Conveyor	30.25"	18'-9"	.750	120	FS/PL T	(2) 90° Curve
RA+	0324	1265	Flat Belt APC	30.25"	30'-0"	1.00	120	FS/PL T	DZB, Photo Eye Accum
BM+	0325	2305	Meter Belt	30.625"	10'-0"	1.00	50/100	FS/PL T	Brake Motor
RA+	0326	1265	Flat Belt APC	30.25"	67'-0"	1.00	90	FS/PL T	DZB
RG+	0326 E	0200	Gravity Roller	24.25"	3'-0"				
RG+	0326 F	0200	Gravity Roller	24.25"	3'-0"				
RG+	0326 G	0200	Gravity Roller	24.25"	3'-0"				
RG+	0326 H	0200	Gravity Roller	24.25"	3'-0"				
RT+	0327	0996	Round Belt Live-Roller	30.25"	12'-0"	.750	100	FS/PL T	1) 90° Curve

11/08/2007

108

SCHEDULE A

PRIME LEASE

Lease dated August 1, 2003,
relating to certain space known as Suite 110
in the Airways Distribution Center
located at 481 Airport Industrial Drive,
Southaven, Mississippi

**IMAGING
SERVICES**

**IMAGING
SERVICES**

11/08/2007

109

SCHEDULE A

PRIME LEASE

Lease dated August 1, 2003,
relating to certain space known as Suite 110
in the Airways Distribution Center
located at 481 Airport Industrial Drive,
Southaven, Mississippi

**IMAGING
SERVICES**

**IMAGING
SERVICES**

FILED
11/08/2007

FILED

INDUSTRIAL LEASE AGREEMENT

BETWEEN

INDUSTRIAL DEVELOPMENTS INTERNATIONAL, INC.

AS LANDLORD

AND

WIRELESS RETAIL, INC.

AS TENANT

**IMAGING
SERVICES**

**IMAGING
SERVICES**

Exhibit

“A”

Part 2 of 3

11/08/2007

11/11

LEASE INDEX

Section	Subject
1	Basic Lease Provisions
2	Demised Premises
3	Term
4	Base Rent
5	Security Deposit
6	Operating Expenses and Additional Rent
7	Use of Demised Premises
8	Insurance
9	Utilities
10	Maintenance and Repairs
11	Tenant's Personal Property, Indemnity
12	Tenant's Fixtures
13	Signs
14	Landlord's Lien
15	Governmental Regulations
16	Environmental Matters
17	Construction of Demised Premises
18	Tenant Alterations and Additions
19	Services by Landlord
20	Fire and Other Casualty
21	Condemnation
22	Tenant's Default
23	Landlord's Right of Entry
24	Landlord's Rights
25	Estoppel Certificate and Financial Statement
26	Landlord's Liability
27	Notices
28	Brokers
29	Assignment and Subleasing
30	Termination or Expiration
31	Intentionally Omitted
32	Late Payments
33	Rules and Regulations
34	Quiet Enjoyment
35	Miscellaneous
36	Special Stipulations
37	Lease Date
38	Authority
39	No Offer Until Executed

Exhibit "A" Demised Premises
 Exhibit "B" Preliminary Plans and Specifications/Work
 Exhibit "C" Special Stipulations
 Exhibit "D" Rules and Regulations
 Exhibit "E" Certificate of Authority
 Exhibit "F" SNDA
 Exhibit "G" Memorandum of Lease
 Exhibit "H" Plans and Specifications for Conveyor Belt System

ATL01/11403516v9

11/08/2007

INDUSTRIAL LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made as of the "Lease Date" (as defined in Section 37 herein) by and between INDUSTRIAL DEVELOPMENTS INTERNATIONAL, INC., a Delaware corporation ("Landlord"), and WIRELESS RETAIL, INC., a Texas corporation ("Tenant") (the words "Landlord" and "Tenant" to include their respective legal representatives, successors and permitted assigns where the context requires or permits).

WITNESSETH:

1. Basic Lease Provisions The following constitute the basic provisions of this Lease:

- (a) Demised Premises Address: 481 Airport Industrial Drive
Suite 110
Southaven, Mississippi 38671
- (b) Demised Premises Square Footage: approximately 177,039 sq. ft.
- (c) Building Square Footage: approximately 246,078 sq. ft.
- (d) Annual Base Rent (based on 177,039 sq. ft. at \$3.272 per square foot; see Section 17 hereof):
- | | | |
|--------------|--------------|---|
| Lease Year 1 | \$579,252.00 | (plus the prorated amount for any Fractional Month per Section 3 hereof, if applicable) |
| Lease Year 2 | \$579,252.00 | |
| Lease Year 3 | \$579,252.00 | |
| Lease Year 4 | \$579,252.00 | |
| Lease Year 5 | \$579,252.00 | |
- (e) Monthly Base Rent Installments (based on 177,039 sq. ft. at \$3.272 per square foot; see Section 17 hereof):
- | | | |
|--------------|--------------------------|---|
| Lease Year 1 | Months 1-2: \$0.00 | |
| | Months 3-15: \$48,271.00 | (plus the prorated amount for any Fractional Month per Section 3 hereof, if applicable) |
| Lease Year 2 | \$48,271.00 | |
| Lease Year 3 | \$48,271.00 | |
| Lease Year 4 | \$48,271.00 | |
| Lease Year 5 | \$48,271.00 | |
- (f) Lease Commencement Date: August 1, 2003
- (g) Base Rent Commencement Date: October 1, 2003
- (h) Expiration Date: The last day of the Sixtieth (60th) full calendar month following the Base Rent Commencement Date
- (i) Primary Term: Sixty-Two (62) months plus, in the event the Base Rent Commencement Date does not occur on the first (1st) day of a calendar month, the period from and including the Base Rent Commencement Date to and, including the last day of the calendar month in which the Base Rent Commencement Date occurs (if applicable, the "Fractional Month")
- (j) Tenant's Operating Expense Percentage: 71.94%
- (k) Security Deposit: \$48,271.00

ATL01/11405528/9

11/08/2007

11/3

(l) Permitted Use: Distribution, warehousing and assembly of wireless telephones and related products and administrative uses reasonably incidental thereto

(m) Address for notices:

Landlord: INDUSTRIAL DEVELOPMENTS
INTERNATIONAL, INC.
c/o IDI, Inc.
3424 Peachtree Road, N.E., Suite 1500
Atlanta, Georgia 30326
Attn: Manager - Lease Administration

Tenant: WIRELESS RETAIL, INC.
8800 E. Chaparral Road, Suite 300
Scottsdale, Arizona 85250
Attn: Real Estate Department
Telephone: (480) 346-4400
Facsimile: (480) 346-4557

(n) Address for rental payments:

INDUSTRIAL DEVELOPMENTS
INTERNATIONAL, INC.
c/o IDI Services Group, LLC
P. O. Box 281464
Atlanta, Georgia 30384-1464

(o) Broker(s): CB Richard Ellis

(p) Guarantor: Wireless America, Inc.

2. Demised Premises. For and in consideration of the rent hereinafter reserved and the mutual covenants hereinafter contained, Landlord does hereby lease and demise unto Tenant, and Tenant does hereby hire, lease and accept, from Landlord all upon the terms and conditions hereinafter set forth the following premises, referred to as the "Demised Premises", as outlined on Exhibit A attached hereto and incorporated herein: an agreed upon approximately 177,039 square feet of space, approximately 11,310 square feet of which is to be office space, located within Building C, shown on Exhibit A (the "Building"), which Building is to be constructed by Landlord, is to contain a total of approximately 246,078 square feet and is to be located within Airways Distribution Center (the "Project") in DeSoto County, Mississippi.

3. Term. To have and to hold the Demised Premises for a preliminary term (the "Preliminary Term") commencing on the Lease Date and ending on the day immediately preceding the Lease Commencement Date as set forth in Section 1(f), and a primary term (the "Primary Term") commencing on the Lease Commencement Date and terminating on the Expiration Date as set forth in Section 1(h), as the Lease Commencement Date and the Expiration Date may be revised pursuant to Section 17, and subject to Tenant's extension option contained in Special Stipulation 4 on Exhibit C attached hereto (the "Preliminary Term, the Primary Term, and any and all extensions thereof, hereinafter referred to as the "Term"). The term "Lease Year", as used in this Lease, shall mean the 12-month period commencing on the Base Rent Commencement Date, and each 12-month period thereafter during the Term; provided, however, that (i) if the Base Rent Commencement Date occurs after the Lease Commencement Date, the first Lease Year will include the period between the Lease Commencement Date and the Base Rent Commencement Date, and (ii) if the Base Rent Commencement Date is a day other than the first day of a calendar month, the first Lease Year shall include the resulting Fractional Month and shall extend through the end of the twelfth (12th) full calendar month following the Base Rent Commencement Date.

4. Base Rent. Tenant shall pay to Landlord at the address set forth in Section 1(n), as base rent for the Demised Premises, commencing on the Base Rent Commencement Date and continuing throughout the Term in lawful money of the United States, the annual amount set forth in Section 1(o) payable in equal monthly installments as set forth in Section 1(e) (the "Base Rent"), payable in advance, without demand and without abatement, reduction, set-off or deduction, on the first day of each calendar month during the Term. If the Base Rent Commencement Date shall fall on a day other than the first day of a calendar month, the Base Rent shall be apportioned pro rata on a per diem basis for the resulting Fractional Month (which pro rata payment shall be due and payable on the Base Rent Commencement Date). No payment by Tenant or receipt by Landlord of rent hereunder shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of rent shall be deemed an accord and satisfaction, and Landlord may accept such check as payment without prejudice to Landlord's right to recover the balance of such installment or payment of rent or pursue any other remedies available to Landlord.

5. Security Deposit

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

(n) Upon Tenant's execution of this Lease, Tenant will pay to Landlord the sum set forth in Section 1(k) (the "Security Deposit") as security for the full and faithful performance by Tenant of each and every term, covenant and condition of this Lease. The acceptance by Landlord of the Security Deposit paid by Tenant shall not render this Lease effective unless and until Landlord shall have executed and delivered to Tenant a fully executed copy of this Lease. The Security Deposit may be commingled with Landlord's other funds or held by Landlord in a separate interest bearing account, with interest paid to Landlord, as Landlord may elect. In the event that Tenant is in default under this Lease, Landlord may retain the Security Deposit for the payment of any sum due Landlord or which Landlord may expend or be required to expend by reason of Tenant's default or failure to perform; provided, however, that any such retention by Landlord shall not be or be deemed to be an election of remedies by Landlord or viewed as liquidated damages, it being expressly understood and agreed that Landlord shall have the right to pursue any and all other remedies available to it under the terms of this Lease or otherwise. In the event all or any portion of the Security Deposit is so retained by Landlord, Tenant shall, within five (5) days of demand therefor from Landlord, replenish the Security Deposit to the full amount set forth in Section 1(k). In the event that Tenant shall comply with all of the terms, covenants and conditions of this Lease, the Security Deposit shall be returned to Tenant within thirty (30) days after the later of (a) the Expiration Date or (b) the date that Tenant delivers possession of the Demised Premises to Landlord. In the event of a sale of the Building, Landlord shall have the right to transfer the Security Deposit to the purchaser, and upon acceptance by such purchaser, Landlord shall be released from all liability for the return of the Security Deposit. Tenant shall not assign or encumber the money deposited as security, and neither Landlord nor its successors or assigns shall be bound by any such assignment or encumbrance.

(b) Tenant shall have the right on the date which is the first day of the thirty-first (31st) month following the Base Rent Commencement Date (the "Return Date"), to request a return of the Security Deposit. If, on the Return Date (a) no Event of Default has occurred and is continuing, (b) Tenant then has a tangible net worth which is (as of the fiscal quarter of Tenant then most recently ended) not less than the six (6) months net worth as of the Lease Date and (c) the business of Tenant has generated positive net operating income for the six (6) fiscal quarters of Tenant most recently preceding the Return Date, as verified by Qualified Financial Statements (as hereinafter defined), the Tenant shall be entitled to have the Security Deposit returned. If Tenant becomes entitled to the return of the Security Deposit in accordance with the foregoing, and the Security Deposit is then being held by Landlord in cash, Landlord will, within fifteen (15) business days after receipt by Landlord from Tenant of a written notice confirming the occurrence of the requirements above and providing any related, supporting Qualified Financial Statements, return the Security Deposit to Tenant. If Landlord is then holding a letter of credit for the Security Deposit, Landlord will, not later than fifteen (15) business days after receipt by Landlord from Tenant of a written notice confirming the occurrence of the requirements above and providing any related, supporting Qualified Financial Statements, return the letter of credit to Tenant. Notwithstanding the foregoing, in the event the Security Deposit has been returned to Tenant in accordance with the terms of this subsection (b), on the date which is six (6) months prior to the expiration of the Initial Term (the "First Re-Deposit Date"), Tenant shall re-deposit the Security Deposit with Landlord as security for the full and faithful performance by Tenant of each and every term, covenant and condition of this Lease (the "Security Deposit Re-Deposit"); provided however that Tenant shall not be required to make the Security Deposit Re-Deposit on the First Re-Deposit Date if Tenant has, as of the First Re-Deposit Date, exercised its option to extend the Term as provided in Special Stipulation 4 of Exhibit C attached hereto. In the event Tenant does so exercise its first extension option on or prior to the First Re-Deposit Date (such that Tenant does not, at that time make the Security Deposit Re-Deposit), Tenant shall, on the date which is six (6) months prior to the expiration of the first extended term (the "Second Re-Deposit Date"), make the Security Deposit Re-Deposit, provided however that Tenant shall not be required to make the Security Deposit Re-Deposit on the Second Re-Deposit Date if Tenant has, as of the Second Re-Deposit Date, exercised its second extension option as provided in Special Stipulation 4 of Exhibit C attached hereto. In the event Tenant does so exercise its second extension option, Tenant shall, on the date which is six (6) months prior to the expiration of the second extended term (the "Third Re-Deposit Date") make the Security Deposit Re-Deposit, it being the intention of the parties that in any event the Landlord shall hold the Security Deposit on the date which is six (6) months prior to the expiration of the Term (as such Term may be extended pursuant to said Special Stipulation 4). In order for a financial statement to constitute a "Qualified Financial Statement," as that term is used herein, such financial statement must (a) cover the relevant fiscal period for the determination being made, (b) be either one or more quarterly statements or an annual statement, (c) be prepared in accordance with generally accepted accounting principles consistently applied, (d) be prepared by one of the "Big Four" accounting firms, (e) be reviewed by such accountants (with respect to quarterly statements) or audited by such accountants (with respect to annual statements), and (f) be certified in writing by the chief financial officer of Tenant to be true, correct and complete.

6. Operating Expenses and Additional Rent.

(a) Tenant agrees to pay as Additional Rent (as defined in Section 6(b) below) its proportionate share of Operating Expenses (as hereinafter defined). "Operating Expenses" shall be defined as all reasonable expenses for operation, repair, replacement and maintenance as necessary to keep the Building and the common areas, driveways, and parking areas associated therewith (collectively, the "Building Common Area") fully operational and in good order, condition and repair, including but not limited to, utilities for the Building Common Area, expenses associated with the driveways and parking areas (including sealing and restriping, and trash, snow and ice removal), security systems, fire detection and prevention systems, lighting facilities, landscaped areas, walkways, painting and caulking, directional

11-06-2007

11-06-2007

signage, curbs, drainage strips, sewer lines, all charges assessed against or attributed to the Building pursuant to any applicable easements, covenants, restrictions, agreements, declaration of protective covenants or development standards, property management fees, all real property taxes and special assessments imposed upon the Building (but excluding special assessments assessed and due and payable for periods prior to the current calendar year), the Building Common Area and the land on which the Building and the Building Common Area are constructed, all costs of insurance paid by Landlord with respect to the Building and the Building Common Area (including, without limitation, commercially reasonable deductibles), and costs of improvements to the Building and the Building Common Area required by any law, ordinance or regulation applicable to the Building and the Building Common Area generally (and not because of the particular use of the Building or the Building Common Area by a particular tenant), which cost shall be amortized on a straight line basis over the useful life of such improvement, as reasonably determined by Landlord. Operating Expenses shall not include expenses for the costs of any maintenance and repairs required to be performed by Landlord at its own expense under Section 10(b). Further, Operating Expenses shall not include (i) the costs for capital improvements unless such costs are incurred for the purpose of causing a material decrease in the Operating Expenses of the Building or the Building Common Area or are incurred with respect to improvements made to comply with laws, ordinances or regulations as described above or (ii) any of the costs expressly excluded from Operating Expenses pursuant to Special Stipulation 3 on Exhibit "C" attached hereto. The proportionate share of Operating Expenses to be paid by Tenant shall be a percentage of the Operating Expenses based upon the proportion that the square footage of the Demised Premises bears to the total square footage of the Building (such figure referred to as "Tenant's Operating Expense Percentage" and set forth in Section 1(f)); provided that, as to management fees, Tenant shall pay Landlord the management fees directly attributable to the Rent (as hereinafter defined) payable hereunder with respect to the Demised Premises, and not Tenant's Operating Expense Percentage of the management fees payable on the entire Building. Notwithstanding the foregoing, Landlord shall, in Landlord's reasonable discretion, have the right to adjust Tenant's proportionate share of individual components of Operating Expenses if Tenant's Operating Expense Percentage thereof would not equitably allocate to Tenant its share of such component of Operating Expenses in light of Tenant's particular use, manner of use and/or level of tenant improvements in the Demised Premises. Prior to or promptly after the beginning of each calendar year during the Term, Landlord shall estimate the total amount of Operating Expenses to be paid by Tenant during each such calendar year and Tenant shall pay to Landlord one-twelfth (1/12) of such sum on the first day of each calendar month during each such calendar year, or part thereof, during the Term. Within a reasonable time after the end of each calendar year, Landlord shall submit to Tenant a statement of the actual amount of Operating Expenses for such calendar year, and the actual amount owed by Tenant, and within thirty (30) days after receipt of such statement, Tenant shall pay any deficiency between the actual amount owed and the estimates paid during such calendar year, or in the event of overpayment, Landlord shall credit the amount of such overpayment toward the next installment of Operating Expenses owed by Tenant or remit such overpayment to Tenant if the Term has expired or has been terminated and no Event of Default exists hereunder. The obligations in the immediately preceding sentence shall survive the expiration or any earlier termination of this Lease. If the Lease Commencement Date shall fall on other than the first day of the calendar year, and/or if the Expiration Date shall fall on other than the last day of the calendar year, Tenant's proportionate share of the Operating Expenses for such calendar year shall be apportioned pro rata. Landlord shall be responsible for keeping the Building Common Areas fully operational and in good order, provided that the related costs shall be paid in accordance with this Section 6(e).

(b) Any amounts required to be paid by Tenant hereunder (in addition to Base Rent) and any charges or expenses incurred by Landlord on behalf of Tenant under the terms of this Lease shall be considered "Additional Rent" payable in the same manner and upon the same terms and conditions as the Base Rent reserved hereunder except as set forth herein to the contrary (all such Base Rent and Additional Rent sometimes being referred to collectively herein as "Rent"). Any failure on the part of Tenant to pay such Additional Rent when and as the same shall become due shall entitle Landlord to the remedies available to it for non-payment of Base Rent. Tenant's obligations for payment of Additional Rent shall begin to accrue on the Lease Commencement Date regardless of the Base Rent Commencement Date.

(c) If applicable in the jurisdiction where the Demised Premises are located, Tenant shall pay and be liable for all rental, sales, use and inventory taxes or other similar taxes, if any, on the amounts payable by Tenant hereunder levied or imposed by any city, state, county or other governmental body having authority, such payments to be in addition to all other payments required to be paid Landlord by Tenant under the terms of this Lease. Such payment shall be made by Tenant directly to such governmental body if billed to Tenant, or if billed to Landlord, such payment shall be paid concurrently with the payment of the Base Rent, Additional Rent, or such other charge upon which the tax is based, all as set forth herein.

7. Use of Demised Premises.

(a) The Demised Premises shall be used for the Permitted Use set forth in Section 1(i) and for no other purpose.

(b) Tenant will permit no liens to attach or exist against the Demised Premises, and shall not commit any waste.

11/08/2007

11/08

(c) The Demised Premises shall not be used for any illegal purposes, and Tenant shall not allow, suffer, or permit any vibration, noise, odor, light or other effect to occur within or around the Demised Premises that could constitute a nuisance or trespass for Landlord or any occupant of the Building or an adjoining building, its customers, agents, or invitees. Upon notice by Landlord to Tenant that any of the aforesaid prohibited uses are occurring, Tenant agrees to promptly remove or control the same.

(d) Tenant shall not in any way violate any law, ordinance or restrictive covenant affecting the Demised Premises ("Laws"), and shall not in any manner use the Demised Premises so as to cause cancellation of, prevent the use of, or increase the rate of, the fire and extended coverage insurance policy required hereunder. Tenant shall have the right, after written notice to Landlord, to contest by appropriate legal proceedings, diligently conducted in good faith, at its sole cost and expense, the validity or application of any Law with which Tenant is not in compliance, and to delay compliance therewith pending the prosecution of such proceedings, provided no civil or criminal penalty would be suffered or incurred by Landlord or the Building and no lien would be imposed upon or satisfied out of the Demised Premises or the Building by reason of such delay, and provided, further, that Landlord shall in no event be obligated to join in any such proceedings. Landlord makes no (and does hereby expressly disclaim any) covenant, representation or warranty as to the Permitted Use being allowed by or being in compliance with any applicable laws, rules, ordinances or restrictive covenants now or hereafter affecting the Demised Premises, and any zoning letters, copies of zoning ordinances or other information from any governmental agency or other third party provided to Tenant by Landlord or any of Landlord's agents or employees shall be for informational purposes only. Tenant hereby expressly acknowledging and agreeing that Tenant shall conduct and rely solely on its own due diligence and investigation with respect to the compliance of the Permitted Use with all such applicable laws, rules, ordinances and restrictive covenants and not on any such information provided by Landlord or any of its agents or employees.

(e) In the event insurance premiums pertaining to the Demised Premises, the Building, or the Building Common Area, whether paid by Landlord or Tenant, are increased over the least hazardous rate available due to the nature of the use of the Demised Premises by Tenant, Tenant shall pay such additional amount as Additional Rent.

(f) Tenant, its permitted subtenants and their employees, licensees and guests, shall have access to the Demised Premises at all times, twenty-four (24) hours per day, every day of the year, subject to such after-normal business hour security procedures as Landlord may require.

8. Insurance.

(a) Tenant covenants and agrees that from and after the Lease Commencement Date or any earlier date upon which Tenant enters or occupies the Demised Premises or any portion thereof, Tenant will carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(i) Liability insurance in the Commercial General Liability form (including Broad Form Property Damage and Contractual Liabilities or reasonable equivalent thereto) covering the Demised Premises and Tenant's use thereof against claims for bodily injury or death, property damage and product liability occurring upon, in or about the Demised Premises, such insurance to be written on an occurrence basis (not a claims made basis), to be in combined single limits amounts not less than \$3,000,000.00 and to have general aggregate limits of not less than \$10,000,000.00 for each policy year, with such commercially reasonable deductibles as may be approved by Landlord, which approval shall not be unreasonably withheld. The insurance coverage required under this Section 8(a)(i) shall, in addition, extend to any liability of Tenant arising out of the liabilities provided for in Section 11 and, if necessary, the policy shall contain a contractual endorsement to that effect.

(ii) Insurance covering (A) all of the items included in the leasehold improvements constructed in the Demised Premises by or at the expense of Landlord (collectively, the "Improvements"), including but not limited to demising walls and ductwork and portions of the heating, ventilating and air conditioning system located within the Demised Premises and (B) Tenant's trade fixtures, merchandise and personal property from time to time in, on or upon the Demised Premises, in an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term, providing protection against perils included within the standard form of "Special Form" fire and casualty insurance policy, together with insurance against sprinkler damage, vandalism and malicious mischief. Any policy proceeds from such insurance relating to the Improvements shall be used solely for the repair, construction and restoration or replacement of the Improvements damaged or destroyed unless this Lease shall cease and terminate under the provisions of Section 20.

(b) All policies of the insurance provided for in Section 8(a) shall be issued in form reasonably acceptable to Landlord by insurance companies with a rating of not less than "A," and financial size of not less than Class XII, in the most current available "Best's Insurance Reports", and licensed to do business in the state in which the Building is located. Each and every such policy:

(i) shall name Landlord, Lender (as defined in Section 24), and any other party reasonably designated by Landlord, as an additional insured. In addition, the coverage described in Section 8(a)(i)(A) relating to the Improvements shall also name Landlord as "loss payee";